

VZCZCXYZ0011
PP RUEHWEB

DE RUEHAK #6707/01 3541405
ZNY CCCCC ZZH
P 201405Z DEC 06
FM AMEMBASSY ANKARA
TO RUEHC/SECSTATE WASHDC PRIORITY 0371
INFO RUEHIT/AMCONSUL ISTANBUL 1828
RUEATRS/DEPT OF TREASURY WASHDC

C O N F I D E N T I A L ANKARA 006707

SIPDIS

SIPDIS

TREASURY FOR INTERNATIONAL AFFAIRS - JROSE AND MNUGENT

E.O. 12958: DECL: 12/21/2011

TAGS: [EFIN](#) [PGOV](#) [TU](#)

SUBJECT: CONSTITUTIONAL COURT DECISION SETS BACK CRUCIAL
SOCIAL SECURITY REFORM

REF: A. ANKARA 6494

[1](#)B. ANKARA 6410

[1](#)C. ANKARA 5849

Classified By: Economic Counselor Thomas Goldberger for reasons 1.4(b)
and (d).

[1](#)1. (C) Summary: Turkey's Constitutional Court has struck down major portions of the Social Security Reform Law, the single most important structural reform in the IFI-supported economic reform program. The press and market analysts have focused on the court's requirement that civil servants be treated under separate legislation. IFI officials, however, tell us the ruling touches on core elements of the broader reform and may make it impossible to implement the reform as scheduled on January 1. The ruling also will necessitate legislative action to adjust the budget that was predicated on the law coming into effect. The Government has yet to decide how it will proceed, stymied in part by the fact that the court has not released the text of its decision. The Court's ruling adds yet another example of the Turkish judiciary -- in cooperation with President Sezer -- finding reasons to strike down economic reforms. End Summary.

Constitutional Court Strikes Down Social Security Reforms

[1](#)2. (C) On December 18, Turkey's Constitutional Court announced that it had struck down parts of the Social Security Reform law, due to come into effect January 1, 2007. The law had been referred to the Constitutional Court by President ezer, after the AK Party-controlled parliament re-passed the legislation over the President's veto in May. Sezer had criticized the reform for raising the retirement age to 66 in a country in which life expectancy is 65. The Court struck down the inclusion of civil servants in the pension and health care reform package, ruling that civil servants should be treated under separate legislation.

Worse than the Press and Analysts Realize

[1](#)3. (C) Initial press and market reaction has been muted. Only private sector unions and the influential business association, TUSIAD, have complained about treating civil servants differently from private sector workers. TUSIAD also warned against delaying the reform until after the 2007 presidential and parliamentary elections. Press reports and market commentary tend to focus on the "technical" nature of the Court's objection and conclude that the requirement to treat civil servants separately can be handled by additional

legislation. IFI officials, however, tell us that they understand the Court to have struck down some of the key features of the broader reform that covers all workers, relating to the valuation of time served for purposes of the pension calculation ("valorization"), the minimum retirement age, and indexation.

14. (C) There is considerable uncertainty about what the court has actually decided because it has not yet published the text of its decision nor its reasoning. The IFI officials tell us it could be weeks before the Court publishes its decision, although a press report December 20 cites Constitutional Court sources claiming the decision will be published by this weekend. The IFI officials note that without seeing the text of the decision it is difficult, if not impossible, for the Government to decide how it will address the ruling. The Labor Minister and GOT technocrats responsible for the reform are reportedly in intense discussions to find a way forward.

15. (C) For lack of a better solution, IFI reps tell us the Government may be forced to delay implementation of the entire Social Security Reform. From the IFI perspective, the worst scenario would be for the Government to try to implement parts of the reform without the whole package. If so, the temptation in an election year may become overwhelming to implement the popular parts (universal health insurance) without the unpopular parts (co-payments for medical care and gradually raising retirement ages, unifying pension payments and making them less generous over time). If the Government decides, for example, it is able to go ahead with the parts of the reform the Court left standing, this could mean that poor people (so-called "Green card" holders under Turkey's welfare system) would have to make co-payments for medical care, while civil servants would not.

Budget out of Whack

16. (C) The IFI officials and the press point out that the 2007 budget, currently under consideration in the parliament, assumes that the social security law would go into effect. If the law does not go into effect, revenues and expenses that were assumed to be under one agency will actually come under a different agency. The IFI officials thought this problem might be easier to fix, by means of supplementary legislation amending the budget law.

Why it Matters

17. (C) The Social Security reform was landmark legislation that would bring universal health insurance to Turkey, and reform Turkey's populist pension system. The law would unify all pension schemes under a single formula and very gradually raise the retirement age and change the methodology by which pensions are calculated. Under the current system, with many Turkish workers retiring in their forties, the system is bleeding red ink and seriously undermining the long-term fiscal stability of the public sector. In fact, the reform, coming while Turkey's population is still relatively young, is designed to stop the fiscal hemorrhaging from taking a dramatic turn for the worse as the ratio of retirees to the working-age population worsens over the coming decades. The reduction in the social security deficit over the next ten years under the reform amounts to a mere one percent of GDP, but without the reform the system may well be unsustainable.

The Political Dimension

18. (C) The Constitutional Court's decision is the most recent example of Turkish courts striking down economic reforms. Only a week earlier, the Council of State (Danistay), Turkey's high administrative court, struck down another key

requirement of IMF and World Bank programs: the privatization of state-owned Halk Bank. There have been myriad other such decisions, creating a consistent pattern of anti-reform judgments (ref c). In the case of the Constitutional Court decisions, these have mostly been referred to the Court by President Sezer (a former Constitutional Court judge) after a parliamentary override of his veto. It seems clear to most observers that the Turkish judiciary is pursuing a political agenda, finding technicalities to kill two birds with one stone: 1) for ideological reasons, the court decisions slow down economic reforms which, while needed, are undermining the powers of the centralized state -- dear to staunch secularists such as the judiciary; 2) for political reasons, the court rulings throw a wrench in the Government's works, complicating Government relations with the IFI's and EU. The rulings also help the political opposition paint the Government as doing the West's bidding and not looking out for the common man. The AK Party Government, though frustrated with the judiciary, tends not to criticize it too loudly, since this opens it to criticism that it is not respecting the independence of the judiciary. With no constituency seeing it in its interest to denounce the judiciary's campaign against economic reform, there is negligible public debate on efforts by this branch of government to hold back Turkey's economic modernization.

Visit Ankara's Classified Web Site at
<http://www.state.sgov.gov/p/eur/ankara/>

WILSON